

CHAPTER 30

**PRIVATE FORESTRY
TIMBER SALES**

TIMBER SALE POLICY

A well-planned and implemented timber harvest can be an essential tool for achieving many sustainable forestry objectives. To help assure successful harvests that meet the needs of landowners while protecting and improving ecosystem values, the Department's policy is to encourage the involvement of a professional forester in the sale of timber on private land. Department foresters may establish timber sales only on lands for which there is a current forest management plan. As detailed on page 21-6 of this handbook, all plans shall adhere to the [Best Management Practices for Water Quality \(BMP\)](#) and silviculture principles established in [Publication FR-226, Wisconsin Forest Management Guidelines \(FMG\)](#).

Sales under the 20-40 acre limitation: Unless otherwise directed, Department foresters may establish timber sales for private landowners within the constraints of section [NR 1.212\(3\)](#), Wis. Adm. Code. Under the rule, "Department foresters may establish timber sales for private landowners where no more than 20 acres of sawtimber or no more than 40 acres of poletimber will be harvested and if the service has not been provided, up to these acreage limits, in the prior 10 year period."

For harvests under the 20-40 acre limitation:

1. As a matter of workload management, Department foresters are encouraged to refer landowners to cooperators on all timber sales, regardless of size.
2. When timber sales are referred, Department foresters will wait for a minimum of 60 days to allow time for cooperators and landowners to make connections.
3. A "referral" consists of the Department forester:
 - a) Providing the landowner the list of cooperating foresters and recommending that the landowner obtain assistance from a cooperator; or
 - b) Communicating requests for timber sale assistance directly to cooperators if the landowner specifically asks the Department to convey the information. (This could include a direct mailing to cooperators serving a county about the landowner's request for assistance. Landowners can also make such contacts themselves with the Forestry Assistance Locator service on the DNR Internet site.); and
 - c) Keeping a list or record of landowner contacts regarding timber sale set up assistance, including the date that 3a or 3b was accomplished.
4. The 60-day referral clock will start once step #3 (above) is completed.
5. When timber sales have been referred, Department foresters are free to set up timber sales that are under the 20/40 rule without supervisory approval after the 60-day waiting period provided that services from a cooperating forester were not reasonably available. Department foresters shall keep documentation of the landowner's "good faith" efforts to hire a cooperator¹. Documentation might include:
 - a) List of cooperators contacted by the landowner or the Department.
 - b) Letters of refusal, responses from cooperating foresters, or credible statements from landowners that they could not find other help.

See page 10-12 of the Private Forestry Handbook for additional information related to mandatory backlog practice referrals.

Sales over the 20-40 acre limitation: All timber sale requests exceeding the 20/40-acre limitations shall be referred to cooperators (see the definition of "referral" in step 3, above). Department foresters may assist landowners with harvests over the 20/40-acre limitation only if assistance from a cooperating forester is not reasonably available (i.e., no cooperator offers service) and the Department forester receives supervisory consent.

¹ If referrals are made for sales under the 20/40 limitation, the same referral period and documentation should be used as for a harvest over the 20/40-acre limitation (the main difference being that supervisory approval is not needed in advance to set up sales under the 20/40 limitation).

Supervisory consent requires getting the answers to the following questions and placing documentation (letters, email or dated notes of verbal supervisory consent) in the landowner's case file:

1. Does the land have a current forest management plan?
2. Did the DNR make a referral at least 60 days prior to setting up the sale?
3. Does setting up the sale fit within the work priorities in [NR 1.212](#), Wis. Adm. Code, and is it consistent with the annual work plan? (See pages 10-11 and 10-12 of this handbook.)
4. Has the landowner made a good-faith effort to locate a cooperating forester and has the landowner provided credible information that services from a cooperating forester are not reasonably available? (See 5a and b, above.)

DNR foresters will advise landowners to solicit multiple cooperators and request bids for the forestry services they desire. Under no circumstances are Department foresters to judge the appropriateness of fees proposed by cooperators.

(Note: A blanket mailing by a cooperator to all landowners with scheduled tax law mandatory practices in a county is not considered an offer of services. If a landowner responds to a cooperator and the cooperator makes a specific proposal to the landowner, that would be considered an offer of services. A DNR forester who is aware that a blanket mailing was sent should, however, question landowners claiming no cooperator assistance is available.)

Private Timber Sale Referral Policy FAQs

Question: Is one refusal letter enough proof to show that services from a cooperator are not available?

Answer: No. One cooperator may refuse to work with a landowner, but a different cooperator may accept working with that same landowner. The one refusal letter policy is no longer applicable and was deleted with the revision of [NR 1.212](#), Wis. Adm. Code that was adopted in 2002.

Question: When a timber sale referral is required, can DNR set up the sale if a landowner received no interest from cooperators during the 60-day waiting period?

Answer: Yes, but the DNR forester must satisfy documentation criteria and assure that higher priority work (e.g. MFL plan writing) is completed.

Question: If a landowner has received no interest from cooperators during the 60-day waiting period, but a cooperator expresses interest in working with the landowner after the 60-day waiting period, can DNR set up the sale?

Answer: Yes. Technically, DNR could set up the sale, but the regions should seriously consider whether this is a wise course of action. Referring timber sales over the 20/40-acre limitation is our policy. If a cooperator expresses interest in a sale after the 60-day waiting period but before the DNR can set up the sale, we should hold off on setting up the sale.

Question: If a timber sale request over the 20/40-acre limitation was included in a mandatory practice mailing to cooperating foresters, does a landowner still need to provide proof that a good-faith effort was made to obtain services from a cooperating forester after the sixty-day waiting period has past?

Answer: A *verified* mandatory practice list is itself a good faith effort to provide notice to cooperators. See item #9, page 10-12 of this handbook. Department foresters should not set up timber sales if landowners have clearly refused reasonable service from a cooperator, but otherwise a verified mandatory practice list starts the sixty-day clock. Department foresters must, however, still document approval of their supervisor to proceed with setting up the harvest.

Timber Sale Assistance Guidelines

The following guidelines summarize the types of services Department foresters may provide for various categories (A-D) of private timber sale needs that are tracked in a forestry assistance request system (see Chapter 20).

A) Non-tax law, first contact

- 1) Perform a field visit with the landowner
- 2) Write a management plan appropriate to the level of the landowner's interests/needs.

- 3) If a sale is needed, forward information to the landowner regarding successful timber sale procedures. Information should include:

- Management plan and map
- Timber marketing information
- Timber sale contract information
- A list of cooperators and information on selecting a cooperating forester
- Other pertinent information

- 4) Establish the harvest within the constraints of the 20/40-acre Timber Sale Policy listed above.

B) Non-tax law, file history with existing management recommendations

- 1) If DNR forester is familiar with the property, a site visit may not be needed. If not familiar with property, make a site visit with landowner.
- 2) Update management plan, if appropriate.
- 3) See steps #3 and #4 under Category A.

C) Tax law, mandatory sale due

- 1) Review the management plan. Validate the need for a harvest with a site visit or via past personal involvement with property.
- 2) If DNR forester determines a sale is not currently advised, update the management plan for the landowner and the office files. Plans can be changed with a letter to the landowner or an updated plan form. Signatures of the landowners are required if a plan revision changes the silvicultural practice(s), including adding or removing a practice, or it affects the productivity of the land. Signatures are not required if the revision is just to postpone the date of a practice or just to change the names after a transfer. See page 20-34 of the Forest Tax Handbook ([2450.5](#)) for additional details. Be sure to update practices data in PlanTrac.
- 3) If DNR forester determines a mandatory sale is needed, send a reminder letter to the landowner (PlanTrac may be a useful way to generate letters). Documentation is important for future possible enforcement.
- 4) See steps #3 and #4 under Category A.

D) Tax law, non-mandatory practice

Same as C above, except a mandatory practice reminder letter is not required.

DNR Involvement in Timber Sale Establishment

For timber harvests where DNR provides assistance, the sale will be encouraged in a fair, equitable, impartial and businesslike manner (e.g., use ethical sealed bid procedures, a written contract, etc.). Remind landowners of their duty to inform bidders of results, to return bid bonds and to follow through with other ethical business responsibilities.

It is the DNR forester's job not only to assist the landowner in marking trees, but to also:

1. Prepare the sale prospectus
2. Encourage the landowner to market (advertise) their sale to optimize value and sale performance standards.
3. Encourage the use of a written contract agreement between the landowner and the purchaser of the sale.
4. Share information with the landowner that will enable him/her to successfully administer the timber sale.
5. Encourage the landowner to take an active part in setting up the sale. This will assure an understanding of what is happening and why.
6. Encourage landowners to sell their timber to logging firms whose employees have completed safety training and Best Management Practices training. If available in the locality and for the types of timber being sold, promote working with Wisconsin Professional Loggers, Wisconsin Certified Master Loggers and Sustainable Forest Initiative (SFI) qualified loggers.

7. Help landowners deal with reputable timber producers. Although DNR foresters may not speculate on the honesty or reputation of particular loggers, foresters can disclose facts such as known convictions of theft or fraud. If in doubt, landowners can be directed to the Wisconsin Circuit Court Access Internet site (<http://wcca.wicourts.gov/index.xsl>) to search on the names of individual loggers or logging companies. Landowners may also call the Department of Agriculture, Trade and Consumer Protection hotline (1-800-422-7128) to inquire about complaints or to file a complaint. Advise landowners to get and check loggers' references.

Foresters should use a group approach with small sales where feasible. Details of a sale can be explained and questions answered through group rather than individual meetings.

Timber Sale Procedures

The recommended procedure for the sale of stumpage from private lands is to:

1. Determine any previous commitments for sale of timber by owner: Determine if any previous agreement had been reached between the owner and a buyer, consulting forester or industrial forester previous to your involvement. Professional integrity requires that you honor such commitments. Notice should be given to landowners if harvest commitments they have made are not consistent with a forest tax law agreement or sound forestry practice.
2. Discuss method of sale: Discuss with the owner the process of selling by various methods. Usually this is done prior to setting up the timber sale. Suggest the use of the Sample Timber Sale Contract (Publication FR 202 2002) or other sample language in the discussion, but do not write the contract for the landowner. (DNR Foresters are agents of the state, not the landowners, and so cannot become involved with contract negotiation or sale administration.)

As part of sale design, DNR foresters should be mindful of operational perspectives. BMPs, skid road location, seasonal cutting restrictions, sale layout, cruising accuracy, etc. are considerations that impact the logging process.

After the sale is marked, consider having a meeting of the landowners to discuss all the components of selling timber. Points stressed include the bidding procedure, explanation of basic terms and timber sale procedures, how timber is sold, market condition and elements of a contract. Such a meeting gives the landowners understanding and confidence in selling timber and stresses their involvement.

Encourage landowners to sell timber by sealed bid. This method is the most business-like and fair to buyer and seller. Inform the landowner of the steps in conducting a successful sale.

3. Prepare a sales prospectus in consultation with the landowner that might include (among other features):
 - A map and/or aerial photo of the sale and immediate area. Indicate on the map/aerial photo the area to be harvested, the roads and access route, ownership, etc.
 - A list of estimated volume by species. Indicate the log rule used and utilization specifications.
 - An indication of the logging chance, BMP considerations, terrain, CRP/CREP or other conservation program issues, and adjacent land use considerations (crop fields or pasture).
 - Comments on quality if deemed necessary.
 - A provision whereby the owner can reject any or all bids.
 - A deadline date for bids to be received by the landowner. The deadline should be at least three weeks after the date of distribution of the prospectus.
 - Contract length.
 - Down payment and performance bond requirements.
 - A statement that volume estimates are not guaranteed and that "bidders should visit sale area to verify volumes and bid accordingly." (See section below on Value of Timber, Advising Owner.) A statement that DNR makes no guarantee of ownership or property boundaries. Timber sale boundaries are based on landowner information.
 - Insect and disease limitations including oak wilt, gypsy moth, invasive species concerns, endangered or threatened resources, cultural resources concerns, etc.

Sales on Boundary Lines

DNR foresters must clearly point out that landowners are responsible for verifying the location of the property or boundary lines. The forester may flag the probable location with the landowner's assistance and with the understanding that the landowner is responsible for verification. If the location of the boundary line or property line is uncertain, the landowner should obtain agreement of adjacent landowners on the location of the line. If informal agreement cannot be reached, the owner may need to locate the line by official survey or other formal means before a DNR forester can establish a timber sale.

Establish cutting lines as close to the property line as possible as any offset from the property line may compound boundary problems in the future. This will help alleviate future adverse possession problems with neighbors.

Inform the landowner in writing that the Department assumes no responsibility for the location of the property or boundary line.

Lump Sum Sales vs. Sale by Scale of Products

Timber sales can be contracted by one of two methods: (1) by price per unit (MBF, cord) based upon scale or count of the cut products, or by (2) lump sum based upon the forester's estimate of the volume. The actual method used depends on individual sales conditions and local practice.

1. Sale by scale of cut products:

The operator and the landowner receive and pay for exactly what is cut and removed using this method.

A. When to use scaled sales:

Scaled sales should be employed when arrangements can be made to obtain an accurate scale from a third party, and where suitable billing or stumpage payment schedule can be made. Typically, a copy of the scale slips are provided to the landowner and used to determine payment from the logger.

If the landowner is going to sell based upon grade rather than volume only, the forester should make every effort to suggest enforceable contract provisions that protect the landowner's interest. It is particularly important with high value timber for landowners to hire cooperating foresters to protect their interests in this area.

B. Scaling cut products:

DNR foresters may not scale, measure or count cut products on private timber sales. Such requests should be satisfied in one of the following ways:

- 1) Referral to a cooperating forester
- 2) Demonstrating to the landowner how to scale logs or pulpwood or measure piece products such as tie cuts. It is acceptable to provide the owner with information, tools and instructions for their use.

2. Sale by lump sum:

Lump sum sales have value in obtaining the money for the stumpage in advance and in keeping the sales expenses and problems to a minimum. The landowner normally collects full payment when the contract is signed or a partial payment at that time and the remainder paid prior to commencement of cutting. This type of sale reduces owner-operator disputes over stumpage payments since scaling is not required. Utilization can be improved. Lump sum sales are advertised using the forester's volume estimate. It is the bidder's responsibility to verify estimates.

Value of Timber, Advising Owner

Landowners may be advised of general information on established stumpage values and current market trends. The forester should not provide sale specific value information. The landowner should be informed of factors that affect sale value such as access, quality, etc. Landowners should be encouraged to utilize competitive bidding (or a similar pricing system) to get a fair price for their timber.

Timber Sale Contracts

Encourage the sale of all private timber stumpage by written contract. Inform the landowner of the types of conditions and requirements often included in the Department's timber sales or the Sample Timber Sale Contract (Publication FR 202 2002). Samples of these forms may be provided.

Suggest the landowner consult with an attorney with timber sale experience or with a qualified cooperating forester regarding contract provisions. Under no circumstances should the DNR forester write contracts for a landowner or enter into agreements for sale of timber on behalf of a landowner.

Showing Timber to Operators

The role of the Department forester is the preparation of a sales prospectus for distribution to loggers. DNR foresters should not show proposed sales to loggers. That is the role of the landowner or the landowner's agent.

Sale Supervision

DNR foresters are prohibited from enforcing private timber sale contracts, but may continue to observe harvest operations to see how well the harvest prescription is being followed. If any contract violations are observed, report them to the landowner or the landowner's agent, not the logger. Let the owner take any necessary action.

Timber Theft Investigation Procedures on Private Land

In its supervisory role over the forests in Wisconsin, the Division of Forestry has authority to respond to situations where activities may result in the cutting and/or removal of forest resources without consent or proper compensation. The development and protection of productive and dynamic forests is in the public interest. Reacting to timber thefts is part of all of our jobs although we have law enforcement discretion as to whether we pursue an enforcement case.

When DNR foresters become aware of a timber theft, it is imperative that they gain certain information regarding the situation. Under some circumstances, time may be of the essence; sometimes days or even hours may make the difference between a quick and successful resolution to a problem and a frustrating, time consuming affair whose success is less certain.

Immediate action is needed in the investigation of a timber theft, especially if it is active, ongoing, or if some of the allegedly stolen materials are still on scene. Quick action will prevent further timber from being taken and will facilitate identifying the culprit. A few photographs, for example, may take only a few minutes to take but can capture people, vehicles with identifying marks, piled material, etc. for irrefutable evidence in a case. If the sale is nearing its end, all such evidence may soon be gone as will facts regarding "who, what, and when".

Non-credentialed foresters should immediately contact a credentialed forestry officer or conservation warden. Such a person should be able to provide consultation and either assist in investigating the situation or provide guidance in what information and evidence to gather immediately.

In situations where a theft is old (for example, a farmer gets into the back woods in deer season and discovers trees missing next to a neighbor's long-completed timber sale), there is less urgency. The investigation must, however, still be done.

Regardless of the timing of the situation, the most important concern is to recognize when there is urgency and the need to ask for some help. There are many effective resources within the Division of Forestry and, more broadly, in the DNR to provide advice and assistance.

Following is a list of questions that investigators will seek answers to when first contacted:

- Who is involved, including name (first, middle initial, last) and date of birth?
 - Landowners (all involved)
 - Contractor
 - Cutter
 - Skidder operators
 - Log buyer
- Is cutting continuing? (Urgent action is needed if cutting is in progress, especially if some of the above players are unknown.)
- Are logs that may have been stolen still on scene? (Urgent action needed if the answer is, “Yes”)
- Is there a contract? Do you have a copy?
- Is the land in a forest tax law program?
- Was a cutting notice filed?
- Have there been any interactions between the disputing parties? Has anyone documented those interactions?
- Are other law enforcement agencies involved?
- Has the scene been documented? Are photographs, sketches or measurements needed?
- Has a survey been done?
- Is there a fence involved?
- Has anyone admitted that timber was cut across the line? Is that documented?
- Has the rightful owner of appropriately cut timber been paid?
- What species of trees were stolen? How many trees are missing? What are the stump heights and diameters of the missing trees?
- Are there tire imprints visible and were they photographed (this is especially important if the identity of the cutter is unknown or in dispute)?
- When is the last time it rained or snowed?

See pages 55-10 through 55-12 of the Timber Theft Chapter in the Forestry Operations Handbook ([2420.5](#)) for additional investigative procedures for foresters, state and county property managers and enforcement officers to follow.